

4389
1 BILL NO. S-79-02-20

2 SPECIAL ORDINANCE NO. S-

Wickham

3 AN ORDINANCE approving an installment
4 purchase agreement with Xerox Corporation

5 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
6 INDIANA:

7 SECTION 1. That the Xerox State and Local Government Equipment
8 Equity Plan (Installment Purchase Agreement) between the City of Fort Wayne,
9 by and through its Mayor and the Board of Public Works, and Xerox Corporation
10 for twelve (12) plain paper copy machines for the total time sale price of
11 \$94,990.62, all as more particularly set forth in said agreement, and which
12 is on file in the Office of the Department of the Controller, and is by
13 reference incorporated herein, made a part hereof and is hereby in all things
14 ratified, confirmed and approved.

15 SECTION 2. This Ordinance shall be in full force and effect from
16 and after its passage and approval by the Mayor.

17
18 Vivian G. Schmidt
19 Councilman
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APPROVED AS TO FORM
AND LEGALITY, _____

Wickham
CITY ATTORNEY

Read the first time in full and on motion by _____, seconded by _____

Steve, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 2-13-79

Charles W. Winterman
CITY CLERK

Read the third time in full and on motion by _____,

seconded by _____, and duly adopted, placed on its passage.

PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____	_____
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>HINGA</u>	_____	_____	_____	_____	_____
<u>HUNTER</u>	_____	_____	_____	_____	_____
<u>MOSES</u>	_____	_____	_____	_____	_____
<u>NUCKOLS</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: _____

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. _____ on the _____ day of _____, 19____.
ATTEST: (SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____

day of _____, 19____, at the hour of _____ o'clock _____ M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 19____

at the hour of _____ o'clock _____ M., E.S.T.

MAYOR

~~Hold until
March 27~~

~~Hold until 2/27
for further discussion~~

~~Hold for 2 weeks -~~
~~Mar. 13~~

March 20

We, your Committee on Finance to whom was referred an Ordinance approving an installment purchase agreement with Xerox Corporation

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance unanimously PASS. 26. 32

DONALD J. SCHMIDT

DATE 3-27-79 CHARLES W. WESTERMAN, CITY CLERK

Memorandum

To William G. Schnizer, Controller

Date February 7, 1979

From James R. Snyder, Director of Purchases

Subject Copy Machine Bid # 876

COPIES TO:

Attached you will find the tabulation sheet from the copy machine bid we opened on Monday, February 5, 1979 at 3:00P.M.. In addition to the attached figures, there are several very important considerations for each bidder.

A.B. Dick, while presenting a fairly low bid, has stated in their conditions that the installment-purchase agreement would be cancellable only if purchasing their higher priced equipment. As you are aware, we must have a clause which allows us to cancel the contract, should our funding run out. For this reason, A.B. Dick's bid is unacceptable.

Hoosier Photo also presented a low bid. However they state in their conditions that the installment purchase agreement is non-cancellable after ninety days from installation. Again, there is no way we can live with this clause, and Hoosier Photo's bid is therefore unacceptable.

I.B.M. presented only a partial bid. They bid on eight of the twelve machines we requested, and they only bid on a two year lease, rather than the five year lease we requested. For these two reasons, I.B.M.'s bid is unacceptable.

Office Concepts came in with a reasonably low bid. However, they would make no firm offer for the installment purchase agreement past one year's time. Office Concepts also stated in their conditions that the agreement cannot be "discontinued" once the agreement is signed. For these two reasons, we must also deem Office Concepts' bid unacceptable.

The 3M Company submitted three bids. All three bids, while priced differently, have the same terms and conditions as part of the agreement. They apply a 50% penalty on the balance of payments should we cancel the lease. This could amount to as much as \$50,000 depending on when the cancellation occurred. This factor alone casts a very negative shadow on the bid of 3M. 3M also declined to state any trade-in terms which would be available at the end of five years.

Xerox, however has stated we are to receive a 20% trade-in allowance off the present purchase price at the end of five years. This amounts to roughly \$34,000. This allowance, coupled with the fact that Xerox will allow us to cancel the contract, should funds not be appropriated, weighs heavily in Xerox's favor.

Based on the above information, I would recommend we accept the bid of Xerox, and proceed with the appropriate steps necessary to complete the transaction.

I remain available for discussion, should you have any questions on any part of this bid package.

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Synopsis of Bid No. 876

	Present Equipment	Allen Bus. Machines	Hoosier Photo Supplies	I B M	Office Concepts	3 M Principal Offer	3 M Alternate I	3 M Alternate II	Xerox	A.B. Dick
Machine Models Offered	(1) Xerox 4000 (3) Xerox 3100 (1) Xerox 4500 (1) Xerox 3107	No Offering	(1) Savin 770 (2) Savin 775 (1) Savin 760 (1) Savin 790 (1) Savin 78E4F	(5) Copier II (2) Copier III-10 (1) Copier III-20	(1) Minolta EP510 (1) Minolta E6201 (1) Minolta EP510x20	(1) Secretary II (2) VHS-R (2) Beta	(1) Secretary III (2) VHS-R (4) Beta	(1) Secretary III (6) Beta	(1) Xerox 4000 (1) Xerox 3107 (1) Xerox 4500 (2) Xerox 3100 (1) Xerox 3100dC	(1) A.B. Dick 990
Cash Sale Price	N/A		\$73,350.00	\$121,054.00	\$55,651.00	\$45,081.60	\$86,796.20	\$94,796.20	\$82,545.50	\$54,000
Down Payment Required	N/A		7335.00	0.00	5565.10	9508.16	8679.62	9479.62	8254.55	5400
Monthly Service Charge (Based on copy volume)	N/A		860.41	1100.70	981.69 (1st year only)	892.80*	813.60*	712.90*	1332.03	1068.62
Monthly Machine Cost (Excluding Service Charge)	N/A		1450.32	3063.37	1165.57	2036.64	1859.16	1816.32	1444.85	1130.88
Total Monthly Cost	\$4220.00*		2310.73	4164.07	2147.26	2929.44	2672.76	2539.12	2776.88*	2149.50
60 Month Cost (Including Down Payment)	\$253,200**		145,978.80	249,844.20	No Offer	185,274.56	169,045.22	160,226.82	174,867.35**	137,370.00
Pre-Payment of 60 Month Contract at 12 Months	N/A		61,415.00	95,134.00	42,574.59	73,851.84	67,027.46	65,110.26	61,222.79	41,382.00
24 Months	N/A		46,055.00	69,214.00	34,040.25	59,451.50	53,669.10	51,590.28	47,376.21	33,085.80
36 Months	N/A		33,011.00	60,527.00	24,231.39	42,036.86	37,464.82	35,727.00	31,049.14	22,550.84
48 Months	N/A		13,212.00	60,527.00	12,957.62	21,907.84	19,458.32	17,520.36	14,818.71	12,591.84
	* Utilities \$1630 Civil City 1546 Park 302 Police 472 Federal 270 \$4220 ** Util. \$59,900 CC 92,760 Park 18,120 Police 28,320 Fed. 16,200 \$253,200					* Does Not Include Replacing Drums or Memory Tapes.	* Does Not Include Replacing Drums or Memory Tapes.	* Does Not Include Replacing Drums or Memory Tapes.	* Civil City \$1065.47 Utilities 1118.44 Park 203.01 Police 268.12 Federal 121.44 \$2776.88 ** CC \$63,940.20 Util. 67,118.40 Park 12,190.40 Police 16,057.20 Fed. 7286.40 \$174,667.35	

XEROX STATE AND LOCAL GOVERNMENT EQUIPMENT EQUITY PLAN

(INSTALLMENT PURCHASE AGREEMENT)

Date _____ 19 _____

Customer's Name The City of Fort Wayne

Xerox Corporation

Customer's Address

4740 Kingsway Drive

City County Building

Indianapolis, Indiana

One Main Street, Fort Wayne, IN

46205

Installation Address(es) 46802

Same

(Branch Office Address)

Customer Check One: ☐ State Government or Political Subdivision including Schools, Hospitals and other Institutions operated as part of State and Local Governments; ☐ Full Time Private Non-Profit School, College or University; ☐ Private Non-Profit Hospital.

This Agreement modifies the Xerox Equipment Purchase Agreement of the same date between Xerox Corporation (Xerox) and Customer, attached hereto, with regards to the following Equipment:

Description	Number of Units	Unit Price
Xerox 4000 Copier	(7)	\$10,165.00
Xerox 3107 Copier	(1)	\$ 7,885.00
Xerox 4500 Copier	(1)	\$14,250.00
Xerox 3100 Copier	(2)	\$ 5,225.00
Xerox 3100 LDC Copier	(1)	\$ 6,365.00

PRICE

The price for the Equipment is as follows:

1. List Price	\$ <u>110,105.00</u>
2. Less Credits:	
a. Rental Credit	\$ <u>27,559.50</u>
b. Trade-in Allowance (Equipment	\$ <u>-</u>
3. Cash Sale Price (Line 1 less line 2 (a + b))	\$ <u>82,545.50</u>
4. Sales Tax (Calculate from line 3)	\$ <u>-</u>
5. Equipment Placement Charges	\$ <u>43.00</u>
6. Total Cash Sale Price (line 3, +4, +5)	\$ <u>82,588.50</u>
7. Cash Down Payment	
a. Down Payment (Minimum of 10% of Line 3)	\$ <u>8,254.55</u>
b. Sales Tax (Same as line 4)	\$ <u>-</u>
c. Equipment Placement Chgs. (Same as line 5)	\$ <u>43.00</u>
d. Total Cash Down Payment	\$ <u>8,297.55</u>
8. Cash Price (Principal) Balance (Line 6 less 7d)	\$ <u>74,290.95</u>
9. Interest	\$ <u>12,402.12</u>
10. Time Balance (Line 8 + 9)	\$ <u>86,693.07</u>
11. Time Sale Price (Line 7d + 10)	\$ <u>94,990.62</u>

NOTE: There are no additional charges due Xerox by Customer for Excise Taxes, Insurance Premiums, or Official Fees. Delivery circumstances may require an additional "rigging" charge which cannot be included as of the date of this Agreement and which will be invoiced to Customer separately.

PAYMENT

Customer promises to pay the total cash down payment in full prior to or concurrent with the transfer of title of the first unit of Equipment purchased hereunder. The balance shall be due in 60 consecutive equal monthly installments of \$ 1,444.88 which shall be due each month on the same day as the title transfer date of the final unit purchased hereunder, it being understood such payments shall commence on the calendar month following the month in which such final transfer of title is made. If the title transfer date falls on the last day of a month, monthly installments shall be due on the last day of each succeeding month. In the event any installment is not paid when due, Customer agrees to pay a late charge, where permitted, of 1% per month of the unpaid installment until paid or the maximum late charge otherwise permitted by applicable law after the expiration of any required grace period.

SECURITY INTEREST

Xerox reserves and Customer grants to Xerox a purchase money security interest in the Equipment and any and all replacements, substitutions, and repairs thereto, as well as any products and proceeds of the foregoing for the purpose of securing the balance of the time sale price due hereunder and all other promises and obligations of Customer to Xerox arising under this Agreement. Customer agrees to sign and execute at any time alone or with Xerox any financing statements or other documents which Xerox deems reasonably necessary to protect and continue Xerox' security interest under this Agreement. Xerox is also granted an irrevocable power of attorney to execute such financing statements or other documents on Customer's behalf. Customer shall prevent and hold Xerox harmless against the assertions of interests or claims by third parties. When all of Customer's promises and obligations have been fully paid and satisfied, Xerox' security interest shall terminate.

TITLE

Title and ownership of the Equipment and any and all replacements, substitutions and repairs thereto, shall pass to Customer upon installation. For equipment already in place on a rental basis, which is not exchanged at Xerox' option, title will pass to Customer (and rental will terminate) on the date of acceptance by Xerox of this Agreement. The Equipment shall remain personal property and shall not become real property. Customer will not suffer or permit any lien or encumbrance of any kind against the Equipment and will pay when due all assessments, taxes, franchise fees, levies or other governmental charges against the Equipment or its use.

INSURANCE

From the time the Equipment is delivered until this Agreement is terminated, Customer shall procure and maintain with an insurance carrier acceptable to Xerox, fire, theft and extended coverage insurance on the Equipment, insuring the full insurable value against risk of loss or damage, and providing for a minimum of 10 days written notice of change or cancellation to Xerox. Such policy of insurance shall be endorsed with a standard mortgage or security interest clause for the benefit of Xerox and shall name Xerox and assigns as primary insureds as their interest may appear. Customer shall provide Xerox with certificates of the insurance carrier or carriers, evidencing such insurance coverage. This agreement does not provide for or require insurance coverage for bodily injury and property damage caused to others.

DEFAULT

Time is of the essence hereof and if Customer shall fail to pay when due any installment, or otherwise fail to observe, keep or perform any provisions of this agreement required to be observed, kept, or performed, or if Customer ceases doing business as a going concern, or if a petition is filed by or against Customer under any of the provisions or chapters of the Bankruptcy Act or any amendment thereto, or if Customer shall make an assignment for the benefit of creditors or call a general meeting of creditors, or attempts an informal arrangement or composition with creditors or if a receiver or any officer of a court be appointed to have control of any of the property or assets of Customer or if Customer makes or has made any misstatement or false statement of fact in connection with this transaction, or if any of the foregoing occurs with regards to any guarantor, or if Xerox, in the exercise of reasonable discretion deems the Equipment to be in jeopardy or feels insecure, the unpaid time balance hereunder shall become immediately due and payable at Xerox' option and without notice. If any of the foregoing occurs, Xerox shall have all of the rights and remedies of a secured party upon default under the Uniform Commercial Code as enacted in the State where the Equipment is located. Xerox may enter upon the premises where the Equipment may be and render the Equipment unusable and/or take possession thereof, and remove, sell, lease or dispose of the Equipment and from the proceeds retain all sums due under the terms of this Agreement, as well as all costs and expenses relating to the enforcement or preservation of its rights hereunder including but not limited to reasonable attorney's fees. In addition, Customer agrees at Xerox' request to assemble the Equipment and make it available to Xerox at a place to be designated by Xerox that is reasonably convenient to both parties. All rights and remedies of Xerox shall be cumulative and may be exercised successively or concurrently and without impairing Xerox' security interest in the Equipment. The foregoing is without limitation to or waiver of any other rights or remedies of Xerox according to law. It is agreed that fifteen (15) calendar days shall constitute reasonable notice for the exercise of any right in the event that applicable law specifically requires such notice.

USE AND LOCATION OF EQUIPMENT

The Equipment will be kept at the installation address(es) and will not be moved without the prior written consent of Xerox, which consent shall not be unreasonably withheld. Customer will not use or deal with the Equipment in any manner which is inconsistent with the terms of this Agreement, any policy of insurance referred to herein, or any applicable laws and regulations. The Equipment will not be misused, abused, wasted or allowed to deteriorate, except for ordinary wear and tear resulting from its intended use. Xerox shall have the right to inspect the Equipment at any reasonable time, wherever located. If any item of the Equipment shall be substantially destroyed or shall be damaged beyond repair due to any cause whatsoever, Xerox shall have the right, upon written demand to Customer to require Customer to pay within thirty (30) days of the date of such demand, the unpaid time balance recalculated, however to delete any interest then unearned on such Equipment less any proceeds of insurance theretofore received by Xerox with respect to such Equipment. Xerox may mark the Equipment to conspicuously show that it has a security interest therein and Customer shall place no conflicting marks or permit the Xerox mark to be removed or defaced. Customer shall bear all risk of loss or damage to the Equipment.

ASSIGNMENT: PREPAYMENT

Customer shall give Xerox not less than fifteen (15) days written notice of any proposed resale or lease of any item of Equipment during the term of this Agreement or any assignment hereof. Such notice shall state the item or items of Equipment to be resold, leased or assigned, and the date upon which sale, lease, or assignment is to be effective. If the Equipment is to be resold, leased or assigned, Customer shall at Xerox' option, pay to Xerox on or prior to such date the prepayment price set forth immediately below.

Customer shall have the right, upon written notice to Xerox specifying the item of Equipment affected to fully satisfy its obligations hereunder with respect to any or all items of Equipment by the payment to Xerox of the unpaid time balance recalculated, however to delete any interest then unearned, provided an administrative fee of fifty (\$50.00) dollars will be charged (where not prohibited by applicable law) on any such prepayment made within twenty-four (24) months from the date hereof.

Xerox may assign this Agreement and transfer its security interest in the Equipment, and in the event of such assignment Customer shall perform all of the promises herein contained to such assignee. Customer will assert any claim or defenses it may have against Xerox and not against any such assignee.

NOTICES

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be valid and sufficient if delivered by hand or dispatched by first class mail, postage prepaid to the addresses set forth first above, or such other address as either party shall notify the other in writing. No additional notice need be given to the installation address(es). Notices dispatched by first class mail shall be deemed to have been given three days after such notice is deposited in any post office or post box.

GENERAL

Each year during the term of this Agreement, (that is, so long as Xerox' security interest shall be outstanding), Customer shall furnish Xerox with copies of its fiscal year end balance sheet and profit and loss statement as prepared by its Certified Public Accountants within ninety days after close of such fiscal year.

No delay or omission to exercise any right, power or remedy accruing to Xerox upon breach or default by Customer under this Agreement shall impair any such right, power or remedy of Xerox, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

Any provision of this Agreement prohibited by the law of any State shall as to said State be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

The section headings used herein are for convenience only and shall have no significance in the interpretation of this Agreement.

If delivery of the Equipment is not made at the time of the execution of this Agreement, Xerox may insert serial and/or identifying numbers and marks of the Equipment on this Agreement and/or any financing statements.

If this Agreement is signed by more than one Customer the obligation of each so signing shall be joint and several.

FUNDING

If Customer periodically requests from its legislative body funds to be paid to Xerox under this Agreement, and through no action initiated by Customer, such legislative body does not appropriate funds for the Equipment described in this Agreement, Customer may, upon prior written notice to Xerox effective 30 days after the giving of such notice return to Xerox, at Customer's expense, the Equipment described in this Agreement and thereupon be released of its obligations to make all installment payments to Xerox due thereafter, provided: (i) Customer delivers unencumbered title to the Equipment to Xerox as of the Effective Date, (ii) the Equipment is returned to Xerox in good condition at a location designated by Xerox, (iii) the foregoing notice states the failure of the legislative body to appropriate the necessary funds as the reason for cancellation, and (iv) the notice is accompanied by payment of all amounts then due to Xerox under this Agreement. In the event the Customer returns the Equipment pursuant to the terms of this paragraph, Xerox shall retain all sums paid hereunder by Customer.

ENTIRE CONTRACT

This Xerox Installment Purchase Agreement and the Xerox Equipment Purchase Agreement which it modifies are entered into at the same time and constitute one contract between the Customer and Xerox with reference to the purchase of the Equipment described above, which contract supersedes any and all prior written or oral agreements. There are no covenants, conditions or agreements between the parties except as set forth in this contract. This contract may only be amended by a written instrument executed by both parties.

NOTICE TO THE BUYER (CUSTOMER):

1. Do not sign this contract before you read it or if it contains any blank spaces.
2. You are entitled to an exact copy of the contract you sign.
3. Under the law you have the right to pay off in advance the full amount due and under certain circumstances to obtain a partial refund of interest.

CUSTOMER ACKNOWLEDGES RECEIPT OF A TRUE COPY HEREOF AND THE AGREEMENT HEREIN REFERRED TO:

CUSTOMER

Accepted by Xerox Corporation
this _____ day of _____, 19_____.

By _____ By _____

(Witness)

(Witness)

EQUIPMENT PURCHASE AND MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this 27
day of February, 19 79 by and between _____
Xerox Corp., hereinafter called "Seller", and
THE CITY OF FORT WAYNE, Indiana, hereinafter called "Buyer":

WITNESSETH:

For and in consideration of the mutual covenants and
promises hereinafter set forth, the parties hereto agree as
follows:

1. EQUIPMENT TO BE PURCHASED. Seller agrees to sell
and Buyer agrees to buy on an installment purchase plan, twelve
(12) plain paper copying machines described in the Schedule
executed by the parties, attached hereto and made a part hereof,
and hereinafter called "Schedule"; pursuant to Purchase Order
No. _____, dated _____, Bid Reference No. _____
876, of the City of Fort Wayne. Said machines are
hereinafter collectively called "Equipment".

2. DELIVERY AND INSTALLATION. Seller shall deliver
each item of Equipment and install the same at the locations shown
on the Schedule. Delivery and installation charges, if any, as
shown in Column 6 of the Schedule shall be paid by Buyer upon
invoicing by Seller.

3. PURCHASE PRICE. The cash sale price and time sale price of each item of Equipment shall be the amounts shown in Columns 5 and 11 of the Schedule, respectively.

4. PAYMENT. Buyer promises to pay as a down payment for said Equipment 10% of the cash sale price, in full prior to or concurrent with the transfer of title of the first unit of Equipment purchased hereunder. Said payment shall be credited against the time sale price and the balance of the time sale price shall be due in sixty (60) consecutive equal monthly installments in the amounts shown in Column 9 of the Schedule, which shall be due each month on the same day as the title transfer date of the final unit purchased hereunder. It being understood such payments shall commence on the calendar month following the month in which such final transfer of title is made. If the title transfer date falls on the last day of a month, monthly installments shall be due on the last day of each succeeding month. In the event any installment is not paid when due, Buyer agrees to pay the late charge, where permitted, of 1% per month of the unpaid installment until paid or the maximum late charge otherwise permitted by applicable law after the expiration of any required grace period.

5. SECURITY INTEREST. Seller reserves and Buyer grants to Seller a purchase money security interest in the Equipment and any and all replacements, substitutions, and repairs thereto, as

well as any products and proceeds of the foregoing for the purpose of securing the balance of the time sale price due hereunder and all other promises and obligations of Buyer to Seller arising under this Agreement. Buyer agrees to sign and execute at any time alone or with Seller any financing statements or other documents which Seller deems reasonably necessary to protect and continue Seller's security interest under this Agreement. Seller is also granted an irrevocable power of attorney to execute such financing statements or other documents on Buyer's behalf. Buyer shall prevent and hold Seller harmless against the assertions of interests or claims by third parties. When all of Buyer's promises and obligations have been fully paid and satisfied, Seller's security interest shall terminate.

6. TITLE. Title and ownership of the Equipment and any and all replacements, substitutions and repairs thereto, shall pass to Buyer upon installation. For Equipment already in place on a rental basis, which is not exchanged at Seller's option, title will pass to Buyer (and rental will terminate) on the date of acceptance by Seller of this Agreement. The Equipment shall remain personal property and shall not become real property. Buyer will not suffer or permit any lien or encumbrance of any kind against the Equipment and will pay when due all assessments, taxes, franchise fees, levies or other governmental charges against the Equipment or its use.

7. INSURANCE. From the time the Equipment is delivered until this Agreement is terminated. Buyer shall procure and maintain with an insurance carrier acceptable to Seller, fire, theft and extended coverage insurance on the Equipment, insuring the full insurable value against risk of loss or damage, and providing for a minimum of ten (10) days written notice of change or cancellation to Seller. Such policy of insurance shall be endorsed with a standard mortgage or security interest clause for the benefit of Seller and shall name Seller and assigns as primary insured as their interest may appear. Buyer shall provide Seller with certificates of the insurance carrier or carriers, evidencing such insurance coverage. This agreement does not provide for or require insurance coverage for bodily injury and property damage caused to others.

8. OPTION TO PRE-PAY. At any time during the sixty (60) months period covered by this agreement, Buyer shall have the right and option, as to any or all items of Equipment, to pre-pay the purchase price. If such pre-payment option is exercised, the amounts required to satisfy the balances owing shall be as shown in Columns 12 through 15 of the Schedule.

9. MAINTENANCE. Seller agrees to keep and maintain the Equipment in good working order for a period of five (5) years from the date of the installation of said Equipment and Buyer agrees to pay for said maintenance, contemporaneously with its purchase installments, the amounts shown in Column 8 of the Schedule. If maintenance charges are variable, said charges shall be in accordance

with the rate schedule of Seller attached to the Schedule. Rates for maintenance service shall include replacement of drums, brushes, and webs. Developer and fuser oil are not included.

10. MAINTENANCE INCLUDED: Seller's maintenance shall include:

- a. Unscheduled repair service necessitated by ordinary use as required by and at the request of the Buyer during normal working hours Monday through Friday, except holidays.
- b. Seller shall have full and free access to the machines to perform service thereon. Seller shall not be responsible for failure to render service due to causes beyond its control.
- c. Replacement parts will be furnished on an exchange basis and will be new, reconditioned, or used. All parts removed due to replacement become the property of Seller.
- d. Seller will install on-site engineering improvements which are placed on the same model of Seller's rental Equipment.
- e. Seller reserves the right at any time to evaluate the individual items of Equipment and determine if an off site renovation, at Seller's expense or identical replacement, is necessary, in order to maintain the Equipment in good working order for the remainder of the term of this Agreement.
- f. Buyer will report to Seller at each month end, on forms provided by Seller, the meter readings required to arrive at the service expense. Invoicing will be on post-monthly basis.

For machines having a minimum monthly charge, there will be no minimum applicable to the initial partial month. The full minimum (without proration) is applicable to the month of termination of the service.

If meter reading reports are not submitted on a timely basis, Seller may estimate the billing on the basis of previous months' usage.

- g. The location of Seller's service organization and guaranteed response time for maintenance service shall be as provided in the Schedule.

11. MAINTENANCE SERVICES NOT INCLUDED:

- a. Services not described herein, including, but not limited to, additional retrofits, services connected with relocation of Equipment, or adding or removing painting or refinishing the unit, the performance of normal operator functions as described in Seller's Operation Manual(s) or repair of damage or increase in service time resulting from operator neglect or unique applications.
- b. If the Buyer requests service outside the terms herein, it will be furnished in accordance with the Hour Rate Provisions in effect for rental customers of Seller when such service is ordered.
- c. The Buyer shall provide Equipment key operators for each shift of operation and Buyer shall present operators to Seller at Seller's training location for instruction in the use of the Equipment as provided in the Schedule.

12. ACCESSORIES:

- a. When an accessory is purchased from Seller for which Seller's maintenance pricing is available, and the accessory is placed on an item of Equipment, that accessory must be included in the maintenance effective upon the expiration of the Purchase Warranty of the accessory. The period of availability of maintenance for the accessory will be concurrent with the mainframe.
- b. Any accessory purchased from Seller for which no maintenance pricing is available and which is attached to the basic Equipment will be serviced as part of the normal service of the mainframe.

Such service will be of the same quality and timeliness as when performed for all Seller's rental customers; however, in the event Seller can no longer maintain such accessory in good working order, Seller will notify the Buyer to remove or replace such accessory.

13. REPLACEMENT OF MACHINES AND ACCESSORIES: If Seller in its sole discretion, cannot maintain the Equipment in good working order during the guaranteed life of the Equipment as shown on the Schedule, Seller shall replace such Equipment with another unit in good working order of the same product family. All placement, removal, transportation, and rigging charges shall be paid by Seller unless otherwise specified in the Schedule.

14. PLACEMENT AND REMOVAL CHARGES: Buyer shall pay Equipment placement and removal charges in accordance with terms and conditions set forth in the Schedule. In addition, any special rigging charges shall be paid by Buyer.

15. ADDITIONAL COVENANTS OF SELLER. Seller shall:

- a. Train Buyer's personnel in the use of Equipment.
- b. Warrant that the Equipment will be free of defects in material and workmanship during the guaranteed life of the Equipment as provided in the Schedule; however, Seller's sole obligation shall be to repair or replace, at its option, Equipment found to be defective under this warranty. Other than the obligation of Lessor expressly set forth herein, Lessor disclaims all warranties, expressed or implied,

including but not limited to any implied warranties of merchantability or fitness for a particular purpose, the foregoing constitutes Lessor's sole obligation with respect to damages, whether direct, incidental or consequential, resulting from the use or performance of the Equipment.

- c. Represent that its Equipment was produced and that services hereunder shall be rendered in compliance with the requirements of the Fair Labor Act of 1938 as amended.
- d. Further represent that it complies with the requirements of Title VII of the Civil Rights Act of 1964.
- e. Provide accessory stands and cabinets if agreed to on Schedule.

16. GENERAL. No delay or omission to exercise any right, power or remedy accruing to Seller upon breach or default by the Buyer under this Agreement shall impair any such right, power or remedy of Seller or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

Any provision of this Agreement prohibited by the law of any State shall as to said State be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

The section headings used herein are for convenience only and shall have no significance in the interpretation of this Agreement.

If delivery of the Equipment is not made at the time of the execution of this Agreement, Seller may insert serial and/or identifying numbers and marks of the Equipment on this Agreement and/or any financing statements.

17. FUNDING. If Buyer periodically requests from its legislative body funds to be paid to Seller under this Agreement, and through no action initiated by Buyer such legislative body does not appropriate funds for any or all items of Equipment described in this Agreement, Buyer may, upon prior written notice to Seller effective thirty (30) days after the giving of such notice return to Buyer at Buyer's expense, such items of Equipment described in this Agreement and thereupon be released of its obligations to make all installment or maintenance service payments to Seller due thereafter as to such items, provided: (1) Buyer delivers unencumbered title to such items to Seller as of the Effective Date, (ii) Such items are returned to Seller in good condition at a location designated by Seller, (iii) the foregoing notice states the failure of the legislative body to appropriate the necessary funds as the reason for cancellation, and (if) the notice is accompanied by payment of all amounts then due to Seller under this Agreement. In the event the Buyer returns the Equipment pursuant to the terms of this paragraph, Seller shall retain all sums paid hereunder by Buyer.

18. USE AND LOCATION OF EQUIPMENT. The Equipment will be kept at the installation address(es) and will not be moved without

the prior written consent of Seller, which consent shall not be unreasonably withheld. Buyer will not use or deal with the Equipment in any manner which is inconsistent with the terms of this Agreement, any policy of insurance referred to herein, or any applicable laws and regulations. The Equipment will not be misused, abused, wasted or allowed to deteriorate, except for ordinary wear and tear resulting from its intended use. Seller shall have the right to inspect the Equipment at any reasonable time, wherever located. If any item of the Equipment shall be substantially destroyed or shall be damaged beyond repair due to any cause whatsoever, Seller shall have the right, upon written demand to Buyer to require Buyer to pay within thirty (30) days of the date of such demand, the unpaid time balance recalculated, however to delete any interest then unearned on such Equipment less any proceeds of insurance and theretofore received by Seller with respect to such Equipment. Seller may mark the Equipment to conspicuously show that it has a security interest therein and Buyer shall place no conflicting marks or permit the Seller's mark to be removed or defaced. Buyer shall bear all risk of loss or damage to the Equipment.

19. ASSIGNMENT: PREPAYMENT. Buyer shall give Seller not less than fifteen (15) days written notice of any proposed resale or lease of any item of Equipment during the term of this Agreement or any assignment hereof. Such notice shall state the item or items of Equipment to be resold, leased or assigned, and the date upon which sale, lease, or assignment is to be effective. If the

Equipment is to be resold, leased or assigned, Buyer shall at Seller's option, pay to Seller on or prior to such date the pre-payment price set forth in the Schedule.

Seller may not assign this Agreement and transfer its security interest in the Equipment, without the written consent of Buyer.

20. BID DOCUMENTS. This Agreement was entered into in reliance upon certain information furnished by Seller at Buyer's request in Buyer's bid invitation for the Equipment. The parties agree that all the representations and agreements set forth in Buyer's bid shall be deemed to be a material part of this Agreement and said bid and the bid documents pertaining thereto are hereby incorporated and made a part hereof by reference.

21. NOTICES. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be valid and sufficient if delivered by hand or dispatched by first class mail, postage prepaid to the addresses set forth first above, or such other address as either party shall notify the other in writing. No additional notice need be given to the installation address(es). Notices dispatched by first class mail shall be deemed to have been given three days after such notice is deposited in any post office or post box.

22. ENTIRE CONTRACT. There are no covenants, conditions or agreements between the parties except as set forth in this contract.

This contract may only be amended by written instrument executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

CITY OF FORT WAYNE
BOARD OF WORKS

By _____ Title

By _____ Title

By _____ Title

Address: City-County Building
Fort Wayne, IN 46802

"BUYER"
(Seal)

By _____ Title

By _____ Title

Address:

"SELLER"
(Seal)

4389

TITLE OF ORDINANCE Ordinance approving a Copy Machine Lease-Purchase Agreement

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

8-79-02-20

SYNOPSIS OF ORDINANCE This ordinance approves a contract between the City of Fort Wayne
and Xerox for the five year installment-purchase of twelve (12) plain paper
copy machines.

EFFECT OF PASSAGE Allow the City to purchase, after five years, twelve (12) copy machines.
This investment will be more economical than continuing to lease on a monthly
basis.

EFFECT OF NON-PASSAGE Continue to lease twelve (12) copy machines on a monthly basis, thus
preventing the City from obtaining the cost savings associated with attached
lease purchase agreement.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) If approved, the attached agreement
will save the City of Fort Wayne at least \$78,332.65 over the next five years.
Of this total, Utilities will save \$30,681.60, Civil City \$33,859.80, Parks
\$5,939.40, Police \$12,232.80, and Federal \$8,913.60. In addition, there will
be the added benefit of owning the machines.

ASSIGNED TO COMMITTEE